BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emission Standards into Procurement Policies.	))))))	R.06-04-009 (Filed April 13, 2006)

REPLY COMMENTS OF CALPINE CORPORATION ON PROPOSED DECISION ON PHASE 1 ISSUES

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Dated: January 8, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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REPLY COMMENTS OF CALPINE CORPORATION ON PROPOSED DECISION ON PHASE 1 ISSUES

Pursuant to Article 14 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Calpine Corporation ("Calpine") respectfully submits its reply to comments submitted on the Proposed Decision of President Peevey and Administrative Law Judge Gottstein ("Proposed Decision") on Phase 1 issues in the Commission's greenhouse gas ("GHG") rulemaking. Specifically, Calpine replies to the assertions made by various parties that (1) long-term financial commitments should not be limited to specified resources that can demonstrate compliance with the interim emissions performance standard ("EPS"); (2) the Proposed Decision violates the Commerce Clause by precluding out-of-state resources from competing in the California market; and (3) the EPS emissions rate should be increased above 1,000 lbs of carbon dioxide ("CO_2") per megawatt-hour ("MWh"). Revising the Proposed Decision to incorporate any of these suggested changes is not supported by Senate Bill ("SB") 1368, is contrary to the fundamental purpose of an interim EPS, and will decrease the likelihood of California meeting its long-term GHG reduction goals. Accordingly, these proposed revisions should be rejected.

I. PROHIBITING LONG-TERM COMMITMENTS WITH UNSPECIFIED CONTRACTS IS CONSISTENT WITH SB 1368 AND WILL NOT THREATEN SYSTEM RELIABILITY

Several parties recommend that the Proposed Decision be revised to permit load serving entities ("LSEs") to enter into long-term contracts with unspecified resources. These parties claim

that prohibiting long-term commitments with unspecified resources is inconsistent with SB 1368, could increase costs to ratepayers, and could threaten reliability. These parties are wrong.

Allowing long-term commitments with unspecified resources is not mandated by SB 1368 nor, conversely, is prohibiting such long-term commitments contrary to the legislation. SB 1368 requires the Commission to "address long-term purchases of electricity from unspecified sources in a manner consistent" with the EPS legislation in general. As the Proposed Decision correctly finds, "consistency" with SB 1368 requires that long-term commitments be limited to resources that can affirmatively demonstrate compliance with the EPS. Absent such a limitation, there is no way to determine whether a commitment with an unspecified resource furthers the goals of SB 1368 or exacerbates the very problems the legislation is trying to address.

Furthermore, parties asserting that SB 1368 does not support a complete prohibition against long-term commitments with unspecified resources ignore that, irrespective of the method employed by the Commission (*e.g.*, adoption of a proxy or an outright ban), *all* such commitments will either be prohibited or allowed. Thus, the question is whether allowing *all* long-term commitments with unspecified resource is consistent with SB 1368. The answer is clearly no. Given that there is no way to determine whether the *actual* emissions from an unspecified resource meets the EPS, allowing long-term commitments with unspecified resources may simply increase commitments with high emitting resources that would otherwise not meet the standard. Such an outcome is, in all respects, inconsistent with both the letter and spirit of SB 1368.

In addition, claims that prohibiting long-term commitments with unspecified resources will increase costs and threaten reliability are equally without merit. As an initial matter, LSEs will continue to be able to enter into short- and intermediate term contracts with all types of resources, including unspecified resources, if needed for reliability or economic purposes. Furthermore, the three large investor owned utilities ("IOUs") have acknowledged that they did not enter into any long-term contracts with unspecified resources in 2004 and 2005, and do not anticipate entering into

such contracts in the 2006-2008 period.[1] Thus, the IOUs' past actions and future plans do not suggest a need for long-term contracts with unspecified resources for reliability purposes. Moreover, given that the IOUs did not use long-term contracts with unspecified resources in 2004 and 2005, there is simply no reason to believe the prohibition would now suddenly result in increased costs. Should circumstances warrant, however, the Proposed Decision would allow exemptions to EPS compliance if necessary to address reliability concerns or the threat of significant financial harm. Such exemptions should provide an adequate safety net should one be needed.

Prohibiting long-term commitments with unspecified long-term contracts is consistent with SB 1368 and will not threaten reliability or increase costs. Accordingly, the Proposed Decision should *not* be revised to permit long-term contracts with unspecified resources.

II. THE PROPOSED DECISION DOES NOT VIOLATE THE COMMERCE CLAUSE NOR UNLAWFULLY PRECLUDE OUT-OF-STATE RESOURCES FROM COMPETING IN THE CALIFORNIA MARKET

The Center for Energy and Economic Development ("CEED") asserts that the Proposed Decision violates the Commerce Clause because the EPS would "effectively preclude[] coal, oil, petroleum coke, waste fuel, and even older natural gas fueled generation from competition in California power markets."[2] In other words, CEED argues that the EPS must permit long-term financial commitments with any type of resource, no matter how polluting. Such a position is not supported by the law and runs completely counter to the purpose of SB 1368.

The Proposed Decision does not treat generation resources differently depending on where the resource is located nor does it distinguish between generation technologies. On the contrary, the Proposed Decision would simply adopt an EPS emissions rate applicable to all long-term commitments for baseload generation resources. Thus, under the Proposed Decision, an out-of-state generation resource would be treated the same as an identical resource located in California - both

[1] Proposed Decision at 121.

[2] CEED Comments on Proposed Decision at 14.

resources would be required to meet the EPS limit. Affording out-of-state interests that same market opportunities as similarly situated in-state resources is not a violation of the Commerce Clause.

Furthermore, the Proposed Decision would not act as a complete ban on high emitting resources selling power in California. The EPS applies only to long-term baseload generation resources. Thus, resources that cannot otherwise meet the EPS limit will still have an opportunity to participate in the California market through short- and medium-term contracts or on a non-baseload basis – again, whether located in-state or out. Thus, contrary to CEED's contention, the Proposed Decision will not preclude out-of-state coal (or any other type of resource for that matter) from selling power in California.

The Proposed Decision does not violate the Commerce Clause nor unlawfully preclude out-of-state resources from competing in the California market. Accordingly, the Commission should reject the arguments raised by CEED.

III. INCREASING THE EPS EMISSION RATE ABOVE 1,000 lbs CO_2/MWh IS INCONSISTENT WITH SB 1368

Several parties recommend increasing the EPS emissions rate above 1,000 lbs CO_2/MWh. Among the reasons given for increasing the rate, parties contend that the emissions associated with some new combined cycle natural gas turbines ("CCGT") is greater than 1,000 lbs CO_2/MWh and a higher limit is needed to accommodate power plants that use oil, coal, and petroleum coke as fuel.[3] These reasons do not warrant increasing the EPS emissions rate.

SB 1368 directs the Commission to adopt an EPS emissions rate that is "*no higher than*" the rate of GHG emissions for CCGT baseload generation.[4] Thus, SB 1368 does not mandate a specific EPS rate (*e.g.*, 1,000 lbs or 1,100 lbs CO_2/MWh); rather, it only sets an upper limit on allowable GHG emissions and it is the Commission's responsibility to establish the actual EPS rate within that limit. The Proposed Decision finds that, based on the California Energy Commission's Continuous Emissions Monitoring System ("CEMS"), for the years 2004 and 2005 emissions from baseload

[3] CEED Comments on Proposed Decision at 9.

CCGT generation ranged from a low of 794 lbs (2005) to a high of 1058 lbs (2004). Moreover, the weighted average of emissions for this time period was between 856-915 lbs.[5]

Based on the CEMS information, a rate of 1,100 lbs (which several parties assert is the appropriate rate) would be "higher than" the highest rate of emissions from a baseload CCGT powerplant during the 2004-2005 period and significantly higher than the weighted average. Thus, an EPS emissions rate of 1,100 lbs CO_2/MWh (or higher for that matter) would exceed the upper limit on allowable GHG emissions set by SB 1368.

In addition, increasing the emissions rate above 1,000 lbs CO_2/MWh would undermine the primary purpose of the EPS, which is to prevent "backsliding" while the Commission and other State agencies develop and implement policies to achieve California's long-term GHG reduction goals, including reducing emissions to 1990 levels by 2020. It is axiomatic that new long-term commitments to high emitting resources will make it much more difficult to meet the State's long-term environmental goals. Thus, the EPS emissions rate should be set at a level that encourages commitments with lower-emitting resources, consistent with the requirements in SB 1368. The Proposed Decision would set an EPS emissions rate that is reasonable given the record and consistent with SB 1368. Accordingly, the EPS emissions rate adopted by the Proposed Decision should not be increased.

Respectfully submitted,

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Dated: January 8, 2007

[4] Pub. Util. Code § 8341(d)(1)

[5] Proposed Decision at 60.

CERTIFICATE OF SERVICE

I, Robin Huey, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

On January 8, 2007, I caused the following to be served:

REPLY COMMENTS OF CALPINE CORPORATION ON PROPOSED DECISION ON PHASE 1 ISSUES

via electronic mail to all parties on the service list R.06-04-009 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as "Appearance" and "State Service" on the attached service list who have not provided an electronic mail address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date above at San Francisco, California.

/s/ Robin Huey

Robin Huey

cc: Commissioner Michael R. Peevey (via U.S. Mail and Email)
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